

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:

MELISSA GAIL NAPIER)
Debtor(s).)
)
) Bk. No. 19-00703-CW3-13
) Chapter 13
) Judge Walker

THE DEADLINE FOR FILING A TIMELY RESPONSE IS: July 5, 2019
IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: July 15, 2019 at 8:30 a.m. in Courtroom 1, 2nd Floor Customs House, 701 Broadway, Nashville, Tennessee 37203

NOTICE OF TRUSTEE'S MOTION TO DISALLOW IN PART THE CLAIM OF U.S. BANK TRUST, N.A. (PAYEE BSI FINANCIAL SERVICES) (COURT CLAIM 16) AND MOTION FOR DETERMINATION OF PREPETITION ARREARS AND ONGOING MORTGAGE PAYMENT

Henry E. Hildebrand, III, Standing Trustee for Chapter 13 matters in the Middle District of Tennessee, by and through his counsel, has asked the Court for the following relief: **Trustee's Motion to Disallow in Part the Claim of U.S. Bank Trust, N.A. (payee BSI Financial Services) (Court Claim 16) and Motion for Determination of Prepetition Arrears and Ongoing Mortgage Payment.**

YOUR RIGHTS MAY BE AFFECTED. If you do not want the court to grant the attached motion by entering the attached order, or if you want the court to consider your views on the motion, then on or before the response date stated above, you or your attorney must:

1. File with the court your response or objection explaining your position. Please note: the Bankruptcy Court for the Middle District of Tennessee requires electronic filing. Any response or objection you wish to file must be submitted electronically. To file electronically, you or your attorney must go to the court website and follow the instructions at: <<https://ecf.tnmb.uscourts.gov>>.

If you need assistance with Electronic Filing you may call the Bankruptcy Court at (615) 736-5584. You may also visit the Bankruptcy Court in person at: 701 Broadway, 1st Floor, Nashville, TN (Monday - Friday, 8:00 A.M. - 4:00 P.M.).

2. Your response must state the deadline for filing responses, the date of the scheduled hearing and the motion to which you are responding.

If a response is filed before the deadline stated above, the hearing will be held at the time and place indicated above. **THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.** You may check whether a timely response has been filed by viewing the case on the court's website at <<https://ecf.tnmb.uscourts.gov>>.

If you or your attorney does not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter the attached order granting that relief.

Date: June 5, 2019

/s/ Tracy L. Schweitzer

Tracy L. Schweitzer
Counsel to Henry E. Hildebrand, III
Chapter 13 Trustee
P. O. Box 340019
Nashville, TN 37203-0019
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:

MELISSA GAIL NAPIER) Bk. No. 19-00703-CW3-13
) Chapter 13
) Judge Walker
))
Debtor(s).)

TRUSTEE'S MOTION TO DISALLOW IN PART THE CLAIM OF U.S. BANK TRUST, N.A.
(PAYEE BSI FINANCIAL SERVICES) (COURT CLAIM 16) AND MOTION FOR
DETERMINATION OF PREPETITION ARREARS AND ONGOING MORTGAGE PAYMENT

Henry E. Hildebrand, III, Standing Trustee for Chapter 13 matters in the Middle District of Tennessee, by and through his counsel, respectfully requests this Court disallow in part the claim of U.S. Bank Trust, N.A., as Trustee of Cabana Series III Trust (payee BSI Financial Services) designated as claim 16 on the Court's claims register, and determine the amount of pre-petition arrearage and ongoing post-petition continuing mortgage payment based upon the failure of BSI to attach an escrow account statement prepared as of the date of the petition to the proof of claim.

In support of this motion, the Trustee would state the debtor filed a voluntary petition under Chapter 13 of Title 11 on February 5, 2019. On May 23, 2019, an order confirming Chapter 13 plan ("Confirmation Order") was entered. The Confirmation Order provided for BSI to be paid as a long-term debt pursuant to 11 U.S.C. § 1322(b)(5) with the Trustee to be the disbursing agent with respect to the cure of pre-petition arrearage in the amount of \$9,679.48, the post-petition, pre-confirmation gap payments from March through May 2019 in the amount of \$1,940.79, and ongoing monthly payments in the amount of \$646.93.

On April 16, 2019, BSI filed a proof of claim designated as claim 16 on the Court's claims register in the amount of \$101,095.72. Claim 16 did not attach an escrow account statement prepared as of the date of petition. Rule 3001(c)(2)(C) provides, "If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date of the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim."

The failure to attach an escrow account statement to the proof of claim precludes the Trustee from accurately determining whether pre-petition arrears and ongoing mortgage payment have been properly calculated. The Trustee requests the Court disallow the pre-petition arrearage asserted on behalf of BSI in the amount of \$9,679.48 and determine the pre-petition arrears are \$0.00. In addition, the Trustee requests the Court establish the post-petition payment to BSI is \$507.51 per month as set forth in the Note attached to claim 16.

WHEREFORE, THE PREMISES CONSIDERED, Trustee objects to Court claim 16 of BSI, in part, and requests the Court determine and establish the pre-petition arrears in the amount of \$0.00, a reduction from the asserted arrearage of \$9,679.48 on the basis that the claim fails to attach an escrow account statement which precludes the Trustee from a proper review of the pre-petition arrearage; and determine the ongoing monthly post-petition payment effective March 2019 is \$507.51 as set forth in the Note attached to the proof of claim; and preclude BSI from presenting the omitted escrow account statement as of the date of the petition in any form as evidence in any contested matter or adversary proceeding in the

case, unless the Court determines the failure to include the escrow account statement was both substantially justified or harmless; and for any other relief, including reasonable attorney's fees and expenses, the Court deems appropriate.

Date: June 4, 2019

Respectfully submitted,

/s/ Tracy L. Schweitzer
Tracy L. Schweitzer
Counsel to Henry E. Hildebrand, III
Chapter 13 Trustee
P. O. Box 340019
Nashville, TN 37203-0019
615-244-1101; Fax 615-242-3241
www.ch13nsh.com
pleadings@ch13nsh.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on June 5, 2019, a true and correct copy of the foregoing was served in the following manner:

By Electronic Case Noticing to:

U.S. Trustee, 318 Customs House, 701 Broadway, Nashville, TN 37203
Long, Burnett, and Johnson, Counsel for Debtor

By U. S. Postal Service, postage prepaid to:

Melissa Gail Napier, 1006 West Bobby Ct., Goodlettsville, TN 37072
Long, Burnett, and Johnson, PLLC, 302 42nd Ave. No., Nashville, TN 37209
BSI Financial Services, Attn.: Officer, Managing or General Agent, 1425 Greenway Dr., Ste. 400, Irving, TX 75038-2480
BSI Financial Services, Registered Agent, c/o Incorp Services, Inc., 216 Centerview Dr., Ste. 317, Brentwood, TN 37027
Michelle R. Ghidotti-Gonsalves, Ghidotti, Berger, LLP, 1920 Old Tustin Avenue, Santa Ana, CA 92705
U.S. Bank Trust, N.A., Attn.: Officer, Managing or General Agent, 300 East Delaware Ave., 8th Floor, Wilmington, DE 19809

By Certified U.S. Mail:

U.S. Bank, N.A., Attn.: Officer, Service of Process Under FRBP 7004(h), 425 Walnut Street, Cincinnati, OH 45202

/s/ Tracy L. Schweitzer
Tracy L. Schweitzer

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:

MELISSA GAIL NAPIER)
) Bk. No. 19-00703-CW3-13
) Chapter 13
) Judge Walker
)
Debtor(s).)

**DRAFT ORDER GRANTING TRUSTEE'S MOTION TO DISALLOW IN PART THE CLAIM OF
U.S. BANK TRUST, N.A. (PAYEE BSI FINANCIAL SERVICES) (COURT CLAIM 16) AND
MOTION FOR DETERMINATION OF PREPETITION ARREARS AND ONGOING MORTGAGE
PAYMENT**

It appearing to the Court, based upon the certification of the Trustee's counsel as indicated by her electronic signature below, that the Trustee, by and through his counsel, has filed an Motion to Disallow in Part the Claim of U.S. Bank Trust, N.A., (payee BSI Financial Services) (Court Claim 16) and Motion for Determination of Prepetition Arrears and Ongoing Mortgage Payment, and that pursuant to Rule 9013-1 of the Local Rules of the Bankruptcy Court for the Middle District of Tennessee, has forwarded a copy of that objection along with notice and an opportunity to be heard to the debtor, debtor's counsel, the mortgage creditor, and the Assistant U.S. Trustee and that no affected party in interest has objected to or required a hearing on the Trustee's motion, it is therefore,

ORDERED, the arrearage to U.S. Bank Trust, N.A. (payee BSI Financial Services) is established at \$0.00; it is further

ORDERED, the ongoing mortgage payment to U.S. Bank Trust, N.A. (payee BSI Financial Services) is \$507.51 as set forth in the Notice attached to the proof of claim; and it is further

ORDERED, U.S. Bank Trust, N.A., the creditor and any servicer for such creditor are prohibited and forever barred from assessing any fees, costs, or set-off amounts against the debtor or against the property that serves as collateral for its loan in connection with the Trustee's Motion.

THIS ORDER WAS SIGNED AND ENTERED
ELECTRONICALLY AS INDICATED AT THE
TOP OF THE FIRST PAGE.

APPROVED BY:

/s/ Tracy L. Schweitzer
Tracy L. Schweitzer
Counsel to Henry E. Hildebrand, III
Chapter 13 Trustee
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Nashville, TN 37203-0019
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